

January 19, 2006
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REMARKS

A. Claims 1, 4-6, 8-9 and 16-21 were rejected under 35 U.S.C. §102(e) as anticipated by Jijina.

Applicants traverse the §102(e) rejection of claims 1, 4-6, 8-9, and 16-21. In order to maintain the §102(e) rejection, each and every element of the claimed invention must be disclosed by the reference in at least as great detail as claimed. Because the references alone or in combination fail to disclose each and every element, the rejection must fall.

Jijina does not disclose acquiring, at the server, an ignition status from the client VCU, as claimed in claims 1, 16 and 19. Claims 4-6, 8-9, 17-18 and 20-21 depend directly or indirectly from claims 1, 16, or 19 and are therefore patentable over Jijina for at least the same reasons. Jijina discloses that a vehicle phone will answer a call forward when the ignition of the vehicle is on, or when the VCU is awake in a DRx cycle. See, ¶7, Jijina. Any "server" that the Examiner alleges is disclosed by Jijina does not acquire the ignition status.

Furthermore, Jijina does not disclose "the client VCU annunciating delivery of the communication prior to actual delivery of the communication; and delaying actual delivery of the communication until the customer initiates delivery of the communication at the client VCU" as claimed in claim 5. The Examiner's citation to ¶23 of Jijina is misplaced – at most, Jijina discloses an announcement to a *caller*, and not at the client VCU. Similarly, Jijina does not disclose "wherein annunciating the communication includes broadcasting an audible message to the customer inside the vehicle" as claimed in claim 6. Similarly, Jijina does not disclose "annunciating in the vehicle the indication of a communication awaiting delivery at the server, upon the client VCU acquiring an IGNITION ON status" as claimed in claim 12.

For at least the above reasons, withdrawal of the rejections to claims 1, 16, and 19 is requested, as well as claims 4-6, 8-15, 17-18, and 20-21 depending directly or indirectly from claims 1, 16, or 19.

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B. Claims 1-5 and 7 were rejected under 35 U.S.C. §103(a) as unpatentable over Nascimento in view of Heyward

The §103(a) rejection of claims 1-5, and 7 is traversed.

In order to maintain the §103(a) rejection, each and every element of the claimed invention must be taught or suggested by the reference in at least as great detail as claimed. Because the references alone or in combination fail to teach or suggest each and every element, the rejection must fall.

There can be no motivation to combine these references. The rationale to modify or combine the prior art may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. MPEP §2144, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *See also In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (setting forth test for implicit teachings); *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App. & Inter. 1985) (examiner must present convincing line of reasoning supporting rejection); and *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning). The Examiner properly does not cite to any express or implied teachings in either Nascimento or Heyward, as neither reference, alone or in combination, provides any such teaching. Therefore, the Examiner must be attempting to rely on either knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. The Examiner makes no citation to any established scientific principles, or precedent established by prior case law, and therefore can only be relying on knowledge generally available to one of ordinary skill in the art.

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However, the Examiner provides no evidence of the ordinary skill in the art. In a case such as this, where the Examiner is improperly attempting to combine disparate references, the Examiner's omission of any details regarding the level of skill of one in the art is especially telling. The mere fact that references *can* be combined is not sufficient to establish obviousness under 35 U.S.C. §103(a). *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990), MPEP §2143.01.

Furthermore, the Examiner's proposed modification fundamentally alters the principle of operation of the references. The claims are directed at a method for delivering a communication for a customer. Such a method, presupposing the existence of such a communication (a method for delivering a communication presupposes the existence of a communication), is diametrically opposing a method that notifies a call center of a vehicle's status *without presupposing any such communication*, based solely on a change in status, as in Heyward. Therefore, the combination of references, even if proper, does not teach or suggest the claimed invention. Applicants also note the contradiction of Heyward, which proposes to conserve wireless resources by repeated utilization of those same wireless resources by updating a call center of each status change – those of ordinary skill in the art would not be motivated to conserve wireless resources by continuously using the same resources.

Withdrawal of the rejections to claims 2-3, 7, and 10-15 is requested.

C. New claim 22

New claim 22 is not disclosed, taught or suggested by the prior art and is therefore patentable over the prior art. Additionally, claim 22 depends directly from claim 1 and is therefore allowable for at least the same reasons as outlined above.

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SUMMARY

The Examiner's rejections of claims 1-21 have been obviated by remarks herein supporting an allowance of pending claims 1-22 over the art of record. The Applicant respectfully submits that claims 1-22 herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

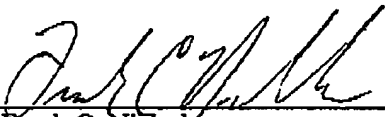
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